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# Haynes Land and Livestock Company v. Jacob Family Chalk Creek : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS

<p>HAYNES LAND &amp; LIVESTOCK COMPANY, partnership, and Triple H. Ranch, LC, a limited liability company,</p> <p style="text-align: right;">Plaintiff-Appellants,</p> <p>vs.</p> <p>JACOB FAMILY CHALK CREEK, LLC, a limited liability company, et al.,</p> <p style="text-align: right;">Defendants-Appellees.</p>	<p><b>REPLY BRIEF OF APPELLEES AND CROSS APPELLANTS FERN J BOYER, GERALD G. BOYER, GREGORY BOYER, J.S. HANSEN AND ALFRED C. BLONQUIST</b></p> <p>Appeal No. 20080858</p> <p>[District Court Case No. 980600244]</p>
<p>Appeal from the Third Judicial District Court, Summit County, State of Utah The Honorable Bruce C. Lubeck, District Court Judge</p>	

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**FILED  
UTAH APPELLATE COURTS**

**IN THE COURT OF APPEALS**

HAYNES LAND & LIVESTOCK  
COMPANY, partnership, and Triple H.  
Ranch, LC, a limited liability company,  
  
Plaintiff-Appellants,

vs.

JACOB FAMILY CHALK CREEK, LLC,  
a limited liability company, et al.,  
  
Defendants-Appellees.

**REPLY BRIEF OF APPELLEES AND  
CROSS APPELLANTS FERN J  
BOYER, GERALD G. BOYER,  
GREGORY BOYER, J.S. HANSEN  
AND ALFRED C. BLONQUIST**

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## **SUMMARY OF ARGUMENT**

The trial court erred in not providing the Boyers, who have owned and accessed their property for generations (over 100 years), the right to use the Middle Fork road to access their property. Based on the trial court's express findings, the public used the Middle Fork road to access the Blue Lakes for decades. Given the close proximity of the three lakes to one another and other evidence, it is virtually inconceivable that the public did not use the Middle Fork Road to access Boyer Lake and, thereby the Boyer Property. Contrary to the conclusion of the trial court, the lack of evidence showing the public used a specific route to travel across the last one-half mile of land necessary to reach the Boyer Property should not have precluded the trial court from providing the Boyers a remedy.

The trial court also erred by failing to connect the East Fork Road to the Boyer Property. The evidence clearly established that even prior to 1929 a path existed from the middle of Section 8 to the Boyer Property. Contrary to the arguments of Haynes, the trial court found the public's use of this way was not interrupted until 1941, a period in excess of ten years. Although the public may have used this route less frequently than the Middle Fork road, the evidence clearly established that they could and did use this portion of the East Fork Road whenever they deemed it convenient to do so. Haynes' contention that the current route differs slightly from the old path should not have precluded the trial court from extending the road all the way to the Boyer Property.

Finally, the trial court erred in granting *sua sponte* Water Users' a prescriptive easement across the Boyer Property. First, it is not necessary to travel across the Boyer Property to reach Boyer Reservoir. Second, that Water Users' reliance on the testimony



of Dennis Wright is misplaced. During his testimony Dennis Wright does not even mention the road across the Boyer Property. Absent any evidence the Water Users have ever used this road (or even needed to) there was no basis to grant them an easement.

**I. CONTRARY TO THE ARGUMENTS OF THE WATER USERS', THE TRIAL COURT ERRED IN NOT EXTENDING THE PUBLIC PORTION OF THE MIDDLE FORK ROAD TO THE BOYER PROPERTY.**

In its opposing brief, the Water Users' maintain that the trial court was correct in not extending the public portion of the Middle Fork road to the Boyer Property. Water users' Brief at 7-10. In support thereof, the Water Users' argue:

1. Boyers failed to establish the public used the Middle Fork Road to access their property (Water Users' Brief at 7); and
2. Boyers failed to establish that the public used a specific path across the last one-half mile of land necessary to reach the Boyer Property (Water Users' Brief at 8-10);

For these reasons, the Water Users' contend that the trial court was correct in refusing to provide the Boyers, who have owned and accessed their property for over 100 years, an independent legal right of their own to access their property.<sup>1</sup> As set forth below, the Water Users' are mistaken.

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<sup>1</sup> An abutting landowner to a public road has a private easement in the road which services the abandonment or vacation of the highway. *Mason v. State*, 656 P.2d 465, 468 (Utah 1982).

**A. Based Upon the Uncontroverted Facts of Record and the Trial Court's Own Findings, It Is Clear That the Public Used the Middle Fork Road to Access the Boyer Property.**

As set forth in Boyer's initial brief, the trial court found that the Middle Fork Road to a point just one-half mile shy of the Boyer Property had been dedicated to the public because many people used it to gain "access to the Blue Lakes." R-Haynes at 1448-49 & 1464 (emphasis added) and exhibits 173 & 174.

Additionally, the court expressly found that the Blue Lakes consist of three lakes, which lakes have referred to in this litigation as Blue Lake, Boyer Lake and Joyce Lake. R-Haynes at 1410. Notwithstanding the same, the trial court held that Boyers' had failed to establish that the public used the Middle Fork Road to access Boyer Lake and, thereby, the Boyer Property. R-Haynes at 1464. For the reasons set forth below, this finding is contrary to the overwhelming evidence of record and constitutes clear error.

The Blue Lakes are located in a high mountain basin in close proximity to one another. Exhibits 173 and 174. From where the trial court found the Middle Fork Road ended, Boyer Lake is located one-half mile (or less) to the north. Exhibits 173 and 174. Joyce Lake is located within a couple hundred yards of Boyer Lake to the north (exhibit 173) and Blue Lake is located approximately one-half mile or so to the east. Exhibit 174. Given the close proximity to one another of those three lakes, it is virtually inconceivable that the public used the Middle Fork Road for decades to access the Blue Lakes, but did not use it to access Boyer Lake. Moreover, from what the court found to be the terminus of the Middle Fork Road, the most direct route to reach the Joyce Lake is to travel due north across the Boyer Property. Thus, to access Boyer Lake it is clear the public would

have traveled across the Boyer Property. Exhibits 116, 173 and 174. It follows there from that unless the public was using the Middle Road only to access Blue Lake, they would almost necessarily have traveled across the Boyer Property. Finally, it is evident that the public was in fact interested in accessing Boyer Lake. Although the trial court found that the East Fork Road had not been dedicated to the public because of its more limited use (R-Haynes at 1454), it is undisputed the road went to Boyer Reservoir. Boyer Brief at 24; Trial Transcript, Vol. III, ¶¶523-524. It defies reason and common sense to conclude that the fewer number of people using the East Fork Road would use that road to access Boyer Lake but that the larger number of people using the Middle Fork Road would not.

**B. The Lack of Evidence Depicting the Exact Route the Public Traveled Over the Last One-half Mile of Land to Reach Boyer Lake is not Fatal to the Establishment of a Public Road.**

In their brief, the Water Users' argue that the public cannot acquire an easement to travel generally over land wherever they want. Water Users' Brief at 8. Accordingly, the Water Users' argue for a public dedication to occur the road in question must have a specific and definite path over which the public traveled. Water Users' Brief at 8. Absent such a fixed path, the Water Users argue a public dedication could not have occurred no matter how long the public traveled over a portion or strip of ground to reach their destination. *See* Water Users Brief at 8. Because the evidence did not establish an exact course or line of travel across the last one-half mile of land necessary to reach Boyer Lake, therefore, the Water Users argue the court was correct in failing to recognize the Middle Fork Road extends all the way to the Boyer Property.

Contrary to the suggestion of the Water Users, Utah Courts have never required a party to establish an exact path along the entire course of a road. For example, in *Lindsay Land & Livestock Co. v. Churnos*, 285 P. 646 (Utah 1929), there was evidence that travel over the road did not always follow an identical or uniform line but in some locations varied from a fixed line of travel. In affirming the lower court's determination that the road had nevertheless been dedicated to the public, the Utah Supreme Court stated:

With respect to the certainty of the line or course of the road, the evidence was also sufficient to support the decree. While the public cannot acquire a right by use to pass over a tract of land generally, but only in a certain line or way, it is not indispensable to the acquisition of the right that there should be no deviation in the use from a direct line of travel. If the travel has remained substantially unchanged, and the practical identity of the road preserved, it is sufficient, although there may have been slight deviations from the common way to avoid encroachments, obstacles, or obstructions upon the road.

*Id.* at 649 (emphasis added). Likewise, in *Sullivan v. Condas*, 290 P. 954 (Utah 1930), the exact course the public traveled had changed over time. In affirming the lower court's determination of a public dedication, the Utah Supreme Court stated “[w]hatever change was made was slight and did not materially change or affect the general course of the highway or of its location nor break or change the continuity of travel or use.” *Id.* at 957-58 (emphasis added).

Although, there is no fixed mathematical formula for determining what does or does not constitute a material deviation from a fixed path, it is clear what constitutes a material change or deviation depends on the particular facts and circumstances. In *Schultz v. Department of Army, U.S.*, 10 F.3d 649 (9th Cir. 1993), the plaintiff claimed

he had a right to cross a military base in Alaska because the Army acquired that base subject to a valid existing R.S. 2477 right-of-way. The evidence at trial, however, did not show that the settlers using the road traveled across the land using a fixed path but varied depending upon the conditions. In concluding the lack of a fixed path did not preclude the finding of a R.S. 2477 right-of-way, the court stated:

Due to its geography, its weather, and its sparse and scattered population, Alaska's "highways" frequently have been no more than trails and they have moved with the season and the purpose for the transit—what travelled best in winter could be impassable knee-deep swamp in summer; what best accommodated a sled was not the best route for a wagon or a horse or a person with a pack. By necessity routes shifted as the seasons shifted and as the uses shifted. What might be considered sporadic use in another context would be consistent or constant use in Alaska. We conclude that as long as the termini of the right of way are fixed (the homesteaders' cabins on one end, Fairbanks on the other), to establish public right of way the route in between need not be absolutely fixed.

*Id.* at 655 (emphasis added). *See also, Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, (10th Cir. 2005), wherein the court, after discussing the *Schultz* decision, recognized that analogous considerations might pertain to Utah, stating "the sparse population, rugged terrain, scarcity of passable routes, seasonal differences in snow, mud and stream flow, fragile and environmentally sensitive land, and paucity of towns or other centers of economic activity, could have an effect on the location of roads." *Id.* at 767.

In the present instance, the road in dispute extends from Highway 133 to the Blue Lakes, a distance of approximately thirteen miles. See Exhibit 117. It is only with respect to the last one-half mile that there is any dispute concerning the location of the

historical route of the road. Yet, even with regard to this segment of the road, it is clear to reach Boyer Lake the public would have traveled between the edge of the basin to the west and the ridge is the middle of the basin to the east. *See* Exhibits 173 and 174.

Unlike the lower portion of the Middle Fork Road which cuts through dense timber and other growth, requiring travelers to keep to an established path, the basin is relatively flat and sparsely vegetated. Exhibits 173, 174 and 278. Thus, like in *Schultz*, the actual path of travel over the last one-half mile of land to reach Boyer Lake may have varied depending on snow drifts, seasonal springs, mud, water flow and the like, but such minor deviations over one-half mile of a thirteen mile road should not have precluded the trial court from finding that the Middle Fork Road extended to the Boyer Property.<sup>2</sup>

## **II. CONTRARY TO THE ARGUMENTS OF HAYNES, THE TRIAL COURT ERRED IN CONCLUDING THE EAST FORK ROAD IS NOT A PUBLIC ROAD ALL THE WAY TO THE BOYER PROPERTY.**

In its opposing brief, Haynes concedes that an established path existed from the middle of Section 8 to Boyer Lake (Haynes' Brief at 24), but argues that Boyers failed to establish it was used by the public continuously for ten years because (1) the use by LeRoy Meadows between 1929 and 1931 was permissive, and (2) Boyers failed to marshal evidence showing Haynes' actions interrupted the public's use of the road from

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<sup>2</sup> In their initial brief, Boyers set forth that the last segment of the Middle Fork road was relocated and succeeded to the public status of the old road. Boyer Brief at 23. In their brief, the Water Users do not dispute that a relocated public road succeeds to the status of the old road – only that the old road did not extend to the Boyer Property. Water Users Brief at 10. Since that issue is addressed herein, Boyer does not readdress the relocation of the Middle Fork Road in this brief but see the discussion herein concerning the East Fork road in part II. B.

1932 onward. In addition, Haynes argues Boyers failed to marshal evidence showing the current path of the road is in a different location than the old route and other evidence showing the use of the roads was permissive.

These arguments are addressed below.

**A. The Evidence of Record Clearly Established the East Fork Road was Used “Continuously” for Over “Ten” Years.**

- (i) By arguing that the public’s use of the subject roads was interrupted from 1932 onward, Haynes is trying to re-litigate the trial court’s factual finding that this did not occur until 1941.**

Boyers concede that during the trial there was conflicting evidence as to whether Howard Haynes, Sr. took actions commencing in 1932 to interrupt the public’s use of the road. In the Memorandum Decision, however, the trial court found that this did not occur until 1941, stating:

After all the conflicts in that testimony concerning the use of the properties, the gates and locks and signs, the court finds that after Howard Haynes Sr. bought the final portion of the Haynes property in 1941 the gates were locked most of the time and it was the intent of Haynes to keep people off the property. . . . Factually since 1941 the Bench Road and the Middle Fork Road and the East Fork Road have been private roads and have not become public roads through usage by the public since that time.

R-Haynes at 1436-37.

The Boyers have not challenged this finding and, therefore, had no obligation to marshal the evidence in contravention to it. More importantly, given the evidence that in 1929 an established trail already existed beyond the middle of Section 8 (Dep. of LeRoy

Meadows, pp.13 & 14), it is therefore clear the road was in existence for more than ten years before Haynes interrupted any public use thereof.

**(ii) The record clearly evidences that the public used the East Fork Road continuously for more than ten years.**

Even though Haynes now concedes that Wright did not own the land comprising the Blue Lakes or the land the upper portion of the East Fork Road traverses (Haynes Brief at 23), Haynes continues to argue the use of the road by LeRoy Meadows and his friends between 1929 and 1931 was permissive because Wright might have been “leasing” the property. Haynes Brief at 23. Aside from the fact Wright was a livestock operator (Haynes Brief at 23), Haynes’ offers absolutely no evidence to support such a conclusion or that such a “grazing” lease would give Wright the authority to let others recreate on somebody else’s land. Thus, it is clear Meadows and his group were trespassers and, thereby public users.

In any event, Haynes is missing the broader point. When LeRoy Meadows and his friends went to the Blue Lakes in 1929, he testified there already existed an established path which they traveled with their horse and buggy. Given the trial courts determination the lower portion of the road had been dedicated to the public between 1880 and 1896 and the public’s use of the road had not been interrupted until 1941, it is clear that the public was free to and did use the road whenever they deemed it convenient to do so.



**B. Even Assuming the Existing Route of the East Fork Road Beyond Section 8 Does Not Follow the Same Exact Path as the Old Route, It Does Not Follow that the Trial Court was Correct in Failing to Extend the Public Portion of the East Fork Road to Boyer Lake.**

For the first time in this litigation, Haynes asserts that the existing route of the East Fork Road (beyond Section 8) is different from the old route and that Boyers failed to marshal the evidence on this point. Because Haynes did not argue this before the trial court, the trial court did not render a finding or even address this issue in rendering its decision. *See*, R-Haynes at 1393-1475. Consequently, Boyers did not marshal this evidence.

Nevertheless, even assuming the new road and the old road do not follow the exact same path, it does not follow that the trial court was correct in failing to declare the East Fork Road a public road all the way to the Boyer Property. Under Utah law, the public's interest in a road, once established, can only be extinguished by strict adherence to the statutory procedures required to do so. *State v. Six Mile Ranch Co.*, 132 P.3d 687, 699-700 (Utah Ct. App. 2006). In this instance, Summit County has never vacated the road. Assuming this court determines that this road was dedicated to the public, therefore, a public road must still exist today.

It is also clear that the relocation of a public road having the same termini and which follows the same general course as the old road can succeed to the public status of the prior road. *See e.g., Central P.R. Co. v. Alameda County*, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L. Ed. 402, 405 (1932); *Memmott v. Anderson*, 642 P.2d 750, 752 (Utah

1982); *Sullivan v. Condas*, 290 P. 954, 957-58 (Utah 1930); and *Western Aggregates, Inc. v. County of Yuba*, 130 Cal. Rptr. 2d 436, 457-59 (Cal. App. 3 Dist. 2002).

In *Central P.R. Co.*, the United States Supreme Court discussed the common law rule regarding deviations in highways:

The original road was formed by the passage of wagons, etc., over the natural soil, and we know, as a matter of ordinary observation, that in such cases the line of travel is subject to occasional deviations owing to changes brought about by storms, temporary obstructions, and other causes. But, so far as the specific parcels of land here in dispute are concerned, we find nothing in the record to compel the conclusion that any departure from the line of the original highway was of such extent as to destroy the identity of the road as originally laid out and used.

*Central P.R. Co.*, 52 S. Ct. at 226.

In *Western Aggregates*, various segments of the original road had been relocated due to the rerouting of the Yuba River, strip mining and other activities, such that in places it was no longer possible to even identify the original path. In concluding the existing road was the functional equivalent of the prior public road, the court reasoned:

This reflects the common sense idea that the road's importance may lie in the points it connects. The "fair inference" is the road connects points, completing a throughway, even if the intermediate route changes. (See *Wilkensen, supra*, 634 F.Supp. at pp. 1275-1276, quoting *Central P.R., supra* 284 U.S. 463, 52 S.Ct. 225, 76 L.Ed. 402.) Professor Bader lists as typical those R.S. 2477 roads "used to connect two or more distinct locations. Examples include routes which are the primary means between towns or which link two transportation arteries, or which once served as stage lines." Here, the County wants the right to go through Western's lands, not to recreate the old route.

*Western Aggregates*, 130 Cal. Rptr. 2d at 457-59.

In *Memmott v. Anderson*, the Utah Supreme Court recognized that a public road which has been relocated succeeds to the status of the old road. In that case, certain landowners closed a portion of a public road located in Millard County and relocated that road across their land because mining activities in proximity to the road had created a dangerous condition. The plaintiff sued to enjoin the road from being relocated because it required him to travel an additional 1,800 feet to reach his mining claim. In denying the plaintiff's claim for an injunction, the Utah Supreme Court stated that "the closing of a road and the providing of a new road . . . does not constitute a deprivation of reasonable access to the public roads." 642 P.2d at 752. Thus, the court necessarily recognized that where the relocated road has the same termini, and the landowner over whose land a roadway changes voices no objection (or changes the route) the new route succeeds to the status of the old route.

There is no mathematical formula for determining the degree to which the location of a road can be changed before it loses its identity. See, e.g., *Western Aggregates*, 130 Cal Rptr. 2d at 458. Whatever the degree of change, it must be material in that it changes the nature or the degree of the servitude imposed. *Id.*; *Ward v. City of Monrovia*, 108 P.2d 425, 429 (Ca. 1940). Thus, "the distance to which a roadway may be changed without destroying an easement will be determined somewhat by the character of the land over which it passes, together with the value improvements, and purposes to which the land is adopted." *Western Aggregates*, 130 Cal. Rptr. 2d at 458.

In the present instance, the existing route and the old route (if in fact any different) have the same termini and follow the same general course along the East Fork of the

Chalk Creek up to Blue Lake. Both the old route and existing route cross over lands that have been and are being used for grazing and recreation. The purpose of the new route is the same as the old; to wit, access to Boyer Lake and surrounding property. There is no evidence whatsoever that the use of the existing route would in any way increase the nature or degree of the servitude.

Furthermore, Haynes should not be allowed to take advantage of his own wrong. *See e.g., Western Aggregates*, 130 Cal. Rptr. 2d at 458. By preventing the public's use of the road since 1941 it is unlikely the route of the old road is even ascertainable. Thus, Haynes should not be entitled to object to the substitution of the existing route for the old route.

For the foregoing reasons, the existing route should be deemed to have succeeded to the public status of the old route.

**C. Boyers Did Not Fail to Otherwise Marshall the Evidence.**

Haynes also alleges Boyers failed to marshal evidence the people using the road were permissive users. Haynes Brief at pp 21-24. By finding that all but the top portions of the subject roads had been dedicated to the public, however, the trial court obviously concluded the users were members of the public. This is consistent with Fern Boyers' testimony that in those days "it was just like wide open country. There were no gates or fences" and that she did not ask anyone permission to use the road. Trial Transcript, Vol. II, p. 431. Haynes is not entitled to relitigate this issue on appeal. Moreover, Haynes does not even address why Wayne Jones' testimony concerning the road after

Haynes interrupted the public's use is even relevant. *See* Trial Transcript, Vol. IV, pp. 795-796.

**III. CONTRARY TO THE ARGUMENTS OF THE WATER USERS, THE TRIAL COURT ERRED IN GRANTING THE WATER USERS AN EASEMENT OVER THE BOYER PROPERTY.**

In their opposing brief, the Water Users argue the trial court was correct in granting them a prescriptive easement across the Boyer Property because (1) the evidence of record sustains such a determination, and (2) in any event, no prejudice occurred because the Water Users have an express easement to travel across the Boyer Property. By so arguing, the Water Users are attempting to purposefully mislead this court. Water Users' Brief at 10-13.

Boyers do not dispute that since the construction of the reservoir representatives of the Water Users have used the East Fork Road to access the reservoir. What the Water Users conveniently fail to reveal to this court, however, is that the Water Users' property, which contains the dam spillway, turnout, etc., is located along the road prior to reaching the Boyer Property. *See*, Ex 117 There is no evidence whatsoever that the water company ever used the road across the Boyer Property for any reason let alone openly, notoriously and adversely for a period of twenty years. During his testimony, Dennis Wright did not even mention the Boyer Property or the road traversing it. Absent any evidence the Water Users actually used (or even need to) the road across the Boyer Property, it is absolutely clear they failed to establish the elements necessary to obtain a prescriptive easement.

The Water Users' reliance on the written easement is equally misleading. In this easement, the Wright brothers granted to the Chalk Creek Water Company an easement across their property, not the Boyer Property. Thus, the written easement relied upon by the Water Users does grant it the right to me the road across the Boyer Property.

**IV. UNDER UTAH LAW, THE PUBLIC'S USE OF THE SUBJECT ROADS IS NOT DEEMED TO BE PERMISSIVE, NOR IS ACTUAL INTENT TO DEDICATE REQUIRED.**

Although the Boyers concede that some jurisdictions presume the use of open, unenclosed lands is permissive, such is not the law in Utah. *See, e.g., Boyer v. Clark*, 326 P.2d 107, 108-110 (Utah 1958) and *Lindsay*, 285 P 646, 646-649 (Utah 1930), wherein the Utah Supreme Court concluded the subject roads had been dedicated to the public despite the fact the roads crossed over open unenclosed lands. Haynes' reliance on the language quoted from *Wilson v. Hull*, 24 P.799, 800 (Utah 1890) on page 45 of its initial brief is misplaced. While early Utah decisions used to require an actual intent on the part of a landowner for a dedication to occur (*see, e.g., Morris v. Blunt*, 161 P.1127, 1131 (Utah 1916), such intent is no longer required. *See, e.g., Thurman v. Byram*, 626 P.2d 447, 449 (Utah 1981).

Further, Haynes' argument that the Utah Supreme Court reinstated the requirement of an actual intent to dedicate in *Wasatch County v. Okelberry*, 179 P.3d 768 (Utah 2008), mistakes the holding of the case. In *Okelberry*, the Utah Supreme Court set forth the following bright line test for determining whether an interruption in use has occurred:

An overt act that is intended by a property owner to interrupt the use of a road as a public thoroughfare, and is reasonably calculated to do so, constitutes an interruption sufficient to restart the running of the required ten-year period under the Dedication Statute.

*Id.*, at 774. *Okelberry*, therefore, requires an intent to interrupt, not an intent to dedicate.

See also Jacob-Christensen Brief, pp. 47-48.

### CONCLUSION

In conclusion, the trial court erred in not extending the East Fork Road and Middle Fork Road all the way to the Boyer Property. The evidence of record clearly established that both roads were used to access the Boyer Property whenever the public desired to do so for more than ten years. Conversely, there is absolutely no evidence of record to sustain the granting of a prescriptive easement in favor of the Water Users across the Boyer Property.

DATED this 10<sup>th</sup> day of December, 2009.

By: Brent A. Bohman  
Brent A. Bohman  
Attorney for Gregory Boyer,  
Gerald Boyer, Fern Boyer and  
Eugene Hansen

**CERTIFICATE OF SERVICE**

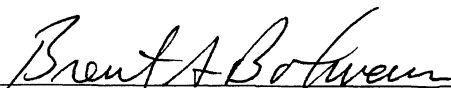
I hereby certify that on the 10<sup>th</sup> day of December, 2009, a true and correct copy of the foregoing **REPLY BRIEF OF APPELLEES AND CROSS APPELLANTS FERN J BOYER, GERALD G. BOYER, GREGORY BOYER, J.S. HANSEN AND ALFRED C. BLONQUIST** was served via first class U.S. mail, postage prepaid, upon:

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